

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EDF RENEWABLE DEVELOPMENT, INC.,

Plaintiff,

Docket No.: CV-13-3361
(LDW)(ARL)

-against-

COUNTY OF SUFFOLK,

**DECLARATION OF
JOHN R. PETROWSKI**

Defendant.

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JOHN R. PETROWSKI, an attorney duly admitted to practice law before the Courts of the State of New York and the United States District Court for the Eastern District of New York, alleges the following under penalty of perjury:

1. I am an Assistant County Attorney with the Office of Dennis M. Brown, Suffolk County Attorney and attorney of record for Defendant COUNTY OF SUFFOLK (“Defendant” or “County”) in the above-captioned matter. I am fully familiar with the facts in this matter and submit this Declaration and the exhibits annexed hereto in support of the County’s motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

2. Attached at **EXHIBIT A** is a copy of the Complaint brought by Plaintiff EDF RENEWABLE DEVELOPMENT, INC. (“Plaintiff” or “EDF”).

3. Attached at **EXHIBIT B** is a copy of Defendant’s Answer to the Complaint.

4. Attached at **EXHIBIT C** is a copy of the Lease between the County and Plaintiff’s predecessor in interest, Eastern Long Island Solar Project, LLC (“ELISP” a/k/a “enXco”), for the installation and operation of solar carports at the Ronkonkoma Long Island Railroad (“LIRR”) station (“Ronkonkoma Lease”).

5. Attached at **EXHIBIT D** is a copy of the deposition transcript of Gerard Nolan, Director of EDF and supervisor to the Project Manager of the ELISP carport project, dated September 10, 2014.

6. Attached at **EXHIBIT E** is a copy of the deposition transcript of Lee Connor, Program Manager of EDF and Project Manager of the ELISP carport project, dated September 23, 2014.

7. Attached at **EXHIBIT F** is a copy of a letter dated August 2, 2010 from Michael Monaghan, Chief Engineer of the Suffolk County Department of Public Works (“DPW”), to Mr. Nolan outlining the requirements for the issuance of a building permit for the Ronkonkoma site and the other six sites being leased from the County to ELISP.

8. Attached at **EXHIBIT G** is a copy of an e-mail exchange between officials with DPW and EDF in connection with the building permit application package for the Ronkonkoma site submitted by EDF to DPW.

9. Attached at **EXHIBIT H** is a copy of the construction plans and drawings submitted by EDF to DPW in support of its application for a building permit to construct the carports at the Ronkonkoma site.

10. Attached at **EXHIBIT I** is a copy of the deposition transcript of Llewellyn Johnson, Assistant Architect of DPW, dated February 10, 2015.

11. Attached at **EXHIBIT J** is a copy of a letter dated February 9, 2015 from the County Treasurer’s Office to EDF returning a check in the amount of \$12,383.64, and the handwritten response from EDF re-submitting the check along with a copy of the Ronkonkoma Lease.

12. Attached at **EXHIBIT K** is a copy of letter dated March 7, 2012 from EDF's in-house counsel, Alex J. Lazur, Esq., to then-Suffolk County Attorney Dennis M. Cohen, in which Mr. Lazur states that "enXco is running up against a very tight time table and construction needs to proceed at Ronkonkoma by March 15, 2012."

13. Attached at **EXHIBIT L** is a copy of a document prepared by EDF dated April 13, 2012 entitled "LIPA & Ronkonkoma Loss Schedule" in which EDF calculated its alleged damages for not building the carports at the Ronkonkoma site to be \$4,433,048.

14. Attached at **EXHIBIT M** is a copy of a document prepared by EDF dated April 26, 2012 entitled "LIPA & Ronkonkoma Loss Schedule" in which EDF calculated its alleged damages for not building the carports at the Ronkonkoma site to be \$4,433,048.

15. Attached at **EXHIBIT N** is a copy an e-mail dated May 31, 2012 from Lee Connor to Gerard Nolan bearing the subject line "Fantasy Land," in which Ms. Connor outlines certain items that EDF wanted from the County for not proceeding with construction of the carports at the Ronkonkoma site.

16. Attached at **EXHIBIT O** is a copy the report prepared by EDF's expert regarding damages, Maryellen K. Sebold of BDO Consulting, dated February 9, 2015, in which she calculates pre-judgment interest commencing on June 15, 2012 and states on pages 19-22: "By June 15, 2012, Suffolk County had not issued a building permit for Ronkonkoma and had not provided an adequate substitute site for Ronkonkoma so that EDF would be able to complete the installation of the solar carports by the deadline under the Power Purchase Agreement with LIPA."

17. Attached at **EXHIBIT P** is a copy of a report produced by ELISP entitled "LIPA Solar Project Status, LIPA Weekly Meeting Minutes for February 23, 2012," in which Lee

Connor reported that “We have heard that the county does not want for us to build Ronkonkoma but we are proceeding with work as though that is not the case but have not come up with any solutions for that yet.”

18. Attached at **EXHIBIT Q** is a copy of an email exchange dated February 16, 2012 between representatives of LIPA and EDF regarding the purported cancellation of the Ronkonkoma project.

19. Attached at **EXHIBIT R** is a copy of the deposition transcript of Dennis M. Cohen, Chief Deputy County Executive and former County Attorney, dated September 12, 2014.

Dated: Hauppauge, New York
June 11, 2015

John R. Petrowski
JOHN R. PETROWSKI
Assistant County Attorney

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